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Before the
Federal Communications Commission
Washington, D.C. 20554

DEC 27 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendment of the Commission's Rules
to Provide Channel Exclusivity To
Qualified Private Carrier Paging
Systems At 929-930 MHz

PR Docket No. 93-35
RM-7986

To: The Commission

**PETITION FOR RECONSIDERATION
AND CLARIFICATION OF
FIRST NATIONAL PAGING COMPANY, INC.**

First National Paging Company, Inc. ("FNP" or "Company"), acting through counsel and in accordance with Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, hereby submits its Petition For Reconsideration and Clarification of the Commission's Report and Order, 58 Fed. Reg. 62289 (November 26, 1993), in this proceeding (the "Order"). In support of its Petition, FNP states as follows:

I. INTRODUCTION

1. FNP is a Virginia corporation which holds FCC Radio Station Licenses for (and has commenced the construction of) a nationwide system to provide one-way private carrier paging service ("PCP") on the 929.1875 MHz frequency. On December 23, 1993, per the requirements of the Order and FCC Public Notice DA 93-1411, released November 19, 1993, FNP submitted to the National Association of Business and Educational Radio ("NABER") a request for nationwide exclusivity on that frequency. Therefore, FNP has

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a direct interest in the terms and conditions on which PCP channel exclusivity will be granted and implemented by the Commission.

2. FNP believes that several procedural and administrative aspects of the Order require reconsideration and formal clarification. These adjustments are necessary to ensure smooth and equitable implementation of the substance of the new exclusivity rules for PCP, in a fashion that will ensure the continued deployment of high-quality, PCP service to the public.

II. Implementing Construction Requirements

3. The Order states that "[t]o qualify for exclusivity, licensees will be required to construct their systems within eight months of licensing." Order, at page 1, ¶ 1. Id., at page 8, ¶ 22. The Commission should make it clear that this same 8-month period will be granted to all licensees at the time they formally are granted exclusivity status, including those "incumbent" licensees when the FCC awards them nationwide or any other level of channel exclusivity. In conjunction with such an award the Commission should issue a Public Notice and the 8-month period to meet the relevant exclusivity construction benchmark should run from the date of that Notice. Further, the Commission should make it clear that during this 8-month period any new applications filed by incumbents granted nationwide (or other) exclusivity will receive the applicable dispositive preferences embodied in Section 90.495(b) and 90.495(f) of the Commission's Rules.

4. This flexibility is reasonable and necessary, for example, for incumbents who, due to equipment availability,

construction scheduling or other legitimate reasons, must employ transmitter sites other than those which were the original basis for a nationwide (or other) exclusivity grant to meet the Order's construction requirements.^{1/} Not to afford this protection would be, among other things, inconsistent with the Order's clear policy against "fill-in" type applications. See, Order, at page 6, ¶ 15. Moreover, failure to provide this reasonable flexibility would ignore the present-day realities of the construction process.

III. Reasonable Slow "Compliance" Period For Incumbents Granted Exclusivity

5. The Order adopts a slow growth mechanism for "new" applications for exclusivity filed with the Commission. Order, at 9-10, ¶ 23. Under the terms of the Order, however, incumbent licensees who qualify for exclusivity do not receive the benefit of this procedure.

6. The Commission should reconsider this decision and provide such incumbents a reasonably comparable mechanism. The Commission must consider that incumbent licensees granted nationwide exclusivity, for example, must construct up to 300 transmitters spread out over the country in a relatively short time period. This can be a significant challenge, especially when there are potentially six or more nationwide networks at various stages

^{1/} As an alternative, the Commission could consider extending the deadline for constructing those sites on which exclusivity was based until the end of the 8-month period.

of construction at the same time, all vying for the necessary transmitters and related equipment.^{2/}

7. FNP supports a mechanism to provide the incumbents granted exclusivity who can justify the need for time beyond the initial 8-month window, an additional period to meet their individual construction buildout requirements for exclusivity. Any such request would have to include the reasons why such an extension is needed, as well as a construction timetable.

8. In this vein, one type of mechanism the Commission could consider would be to permit a transition period during which licensees could rely on the shared use of multi-frequency transmitters for purposes of meeting individual exclusivity buildout requirements. Such a "transition" mechanism would grant a reasonable period beyond the initial 8 months for incumbents who qualify for exclusivity to move from multi-frequency transmitter operation to a single frequency transmitter operation, so long as they have met the buildout requirements relying on shared use transmitters within the required 8-month window. Such a mechanism could actually aid in the build out of competitive, nationwide PCP systems before each individual licensee could obtain and construct a separate set of transmitters (i.e., help expedite competitive service to the public). The Commission should put a reasonable

^{2/} In March of this year, the Commission estimated that there could be "immediate" exclusivity for as many as six nationwide and nine regional PCP networks. PCP Exclusivity (Notice of Proposed Rulemaking), 8 FCC Rcd. 2227, 2232, n. 52 (1993).

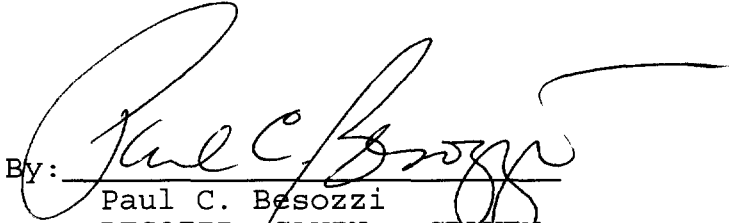
time limit on the transition period to avoid potential abuses and ensure further system build out.

IV. Conclusion

9. The Order establishes a comprehensive set of rules for implementing PCP exclusivity and the Commission is to be applauded for taking this step. However, the Commission should reconsider and clarify the administrative aspects of the Order as outlined above. The modifications and clarifications proposed would give clear guidance on the implementation of the new exclusivity rules and help ensure expedited PCP service to the public.

Respectfully submitted,

FIRST NATIONAL PAGING COMPANY, INC.

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